

1 ELAINE K. KIM (SBN 242066)
ekk@msk.com
2 MITCHELL SILBERBERG & KNUPP LLP
11377 West Olympic Boulevard
3 Los Angeles, CA 90064-1683
Telephone: (310) 312-2000
4 Facsimile: (310) 312-3100

5 R. WILLIS ORTON (*pro hac vice pending*)
worton@kmclaw.com
6 ANTONIO A. MEJIA (*pro hac vice pending*)
tmejia@kmclaw.com
7 JUSTIN W. STARR (*pro hac vice pending*)
jstarr@kmclaw.com
8 KIRTON McCONKIE
50 East South Temple, Fourth Floor
9 Salt Lake City, Utah 84111
Telephone: (801) 328-3600
10 Facsimile: (801) 321-4893

11 Attorneys for Defendants
Tatto, Inc., Mobile Media Products, LLC,
12 Chairman Ventures, LLC, Galactic Media,
LLC, Virtus Media, LLC, and Lin Miao
13

14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA

16 FEDERAL TRADE COMMISSION,

17 Plaintiff,

18 v.

19 TATTO, INC., a corporation, also d/b/a
WINBIGBIDLOW and TATTO
20 MEDIA; BULLROARER, INC., a
corporation, also d/b/a BULLROARER
21 CORPORATION PTY LTD;
SHABOOM MEDIA, LLC, a limited
22 liability company, also d/b/a TATTO
MEDIA; BUNE, LLC, a limited
23 liability company; MOBILE MEDIA
PRODUCTS, LLC, a limited liability
24 company; CHAIRMAN VENTURES,
LLC, a limited liability company;
25 GALACTIC MEDIA, LLC, a limited
liability company; VIRTUS MEDIA,
26 LLC, a limited liability company; LIN
MIAO, in his individual and corporate
27 capacity; and ANDREW BACHMAN,
in his individual and corporate capacity,

28 Defendants.

CASE NO. CV 13-8912 DSF (FFMx)

Hon. Dale S. Fischer

**DECLARATION OF LIN MIAO IN
SUPPORT OF DEFENDANTS'
RESPONSE TO ORDER TO SHOW
CAUSE WHY A PRELIMINARY
INJUNCTION SHOULD NOT
ISSUE**

Time: 1:30 p.m.
Date: December 18, 2013
Ctmm: 840 (Roybal)

1 I, Lin Miao, declare as follows:

2 1. I am a resident of the State of California. I have personal knowledge
3 of the following facts and, if called and sworn as a witness, could and would
4 competently testify thereto.

5 2. I am the owner and officer of Tatto, Inc. ("Tatto"), and was an officer
6 of Chairman Ventures, LLC.

7 3. The FTC's complaint alleges that Bullroarer, Inc. d/b/a Bullroarer
8 Corporation Pty Ltd ("Bullroarer") and Tatto are commonly owned by Ozura
9 World, Ltd. ("Ozura"). That is not true. Tatto has no parent company and no
10 common ownership or affiliation with Bullroarer. I have never been an owner or
11 officer of Ozura or Bullroarer. Ozura and Bullroarer simply have nothing to do
12 with Tatto or any other entity that I own or control.

13 4. Tatto, Mobile Media Products, LLC, Chairman Ventures, LLC,
14 Galactic Media, LLC, and Virtus Media, LLC (collectively, the "Tatto Corporate
15 Defendants" and together with myself, the "Tatto Defendants") were engaged in
16 the business of providing digital content to mobile phone subscribers. The Tatto
17 Corporate Defendants have not engaged in this business since 2012.

18 5. Many mobile phones support a service feature called Short Message
19 Service, or SMS for short. SMS has become commonly known as text messaging,
20 or simply "texting."

21 6. SMS can be used to deliver digital content, such as news alerts,
22 financial information, ring tones, or celebrity gossip.

23 7. Some companies offer "premium" content via texting to mobile phone
24 subscribers for a fee.

25 8. Many mobile phone carriers assist content providers by billing
26 subscribers for these services, often called "Premium SMS" services.

27 9. Digital content providers use advertising to get subscribers. The
28 subscriber provides the content provider with his cell phone number. The content

1 provider then sends the subscriber a text message that includes a “short code.” The
2 customer then sends a text message to the content provider with the short code.
3 The content provider then texts a PIN number to the subscriber with a description
4 of the service and the charges. The customer subscribes by sending the PIN
5 number back to the content provider.

6 10. Mobile carriers bill subscribers directly for Premium SMS services.
7 The charge is placed on the customer’s monthly bill. The mobile carrier, not the
8 content provider, chooses where to place the charge on the bill and how to describe
9 the service.

10 11. Mobile carriers profit from this by keeping a percentage of the charge,
11 usually about 50% net of any refunds or write offs to their customers.

12 12. The other 50% is usually sent to an “aggregator” who works with
13 various mobile carriers and content providers, and the aggregator keeps 10% and
14 sends the rest to the content provider.

15 13. Premium SMS is used for a variety of reasons, including to raise
16 money for charity or politicians, to obtain information, for entertainment, and for
17 communication.

18 14. Premium SMS has largely been self-regulated. In its early days, there
19 was very little regulation. Mobile carriers were ahead of regulatory agencies and
20 imposed strict standards regarding acceptable complaint percentages. In recent
21 years, however, mobile carriers have regulated the practice more carefully. Mobile
22 carriers offered SMS-related services, such as ring tones and call blocking, and
23 profited from such services.

24 15. The FTC says “cramming” occurs when a content provider “adds a
25 charge to your phone bill for a service you didn’t order, agree to, or use.”¹ The
26 FCC defines it as “the practice of placing unauthorized, misleading or deceptive
27

28 ¹ <http://www.consumer.ftc.gov/articles/0183-mystery-charges-your-phone-bill>

1 charges on your telephone bill.”² The Tatto Defendants did not engage in so-called
2 “cramming” or any other deceptive or unauthorized practice.

3 16. The Tatto Defendants operated exactly like the “legitimate” content
4 providers described by the FTC, including by adopting the “double opt-in”
5 verification. After initial contact, every potential customer received a PIN along
6 with a full and accurate description of the services provided and the \$9.99 monthly
7 subscription. As part of the double opt-in verification, subscribers had to opt in
8 using the PIN.

9 17. Further, after subscribing through the double opt-in process, the Tatto
10 Defendants sent every subscriber a confirmation text message that again disclosed
11 the \$9.99 monthly charge. A significant percentage of subscribers immediately
12 cancelled upon receiving the confirmation, which showed us that it was an
13 effective way of verifying with subscribers that they knew exactly what they had
14 signed up for.

15 18. Further, the Tatto Defendants also sent renewal notices to some
16 subscribers that again disclosed the \$9.99 monthly charge.

17 19. The Tatto Defendants did not create the content that was sent to
18 subscribers. The Tatto Defendants were involved only in creating advertising and
19 attracting subscribers.

20 20. The Tatto Defendants never ran any Justin Bieber campaign. I do not
21 know why the FTC has imputed to the Tatto Defendants the offering of tickets for
22 a concert and failing to provide them.

23 21. The Tatto Defendants had nothing to do with how mobile carriers
24 chose to describe the service on the bill, or with where on the bill the charge was
25 placed, or on which page a charge appeared. The Tatto Defendants had every
26 incentive to list charges that showed a subscriber where to call to reach the Tatto

27 ² [http://www.fcc.gov/guides/cramming-unauthorized-misleading-or-deceptive-](http://www.fcc.gov/guides/cramming-unauthorized-misleading-or-deceptive-charges-placed-your-telephone-bill)
28 [charges-placed-your-telephone-bill](http://www.fcc.gov/guides/cramming-unauthorized-misleading-or-deceptive-charges-placed-your-telephone-bill)

1 Defendants for customer issues because of the mobile carriers' strict standards
2 governing customer complaints. For these reasons, the Tatto Defendants
3 affirmatively worked to change the descriptions. In many cases, the Tatto
4 Defendants were successful; but some mobile carriers refused to change the
5 description. I speculate that the mobile carriers may have been motivated by the
6 revenue they received from our services and others in the industry.

7 22. The Tatto Defendants spent a large amount of money to establish a
8 customer service call center. The number was provided in the confirmation text
9 message and the renewal messages sent to the subscribers.

10 23. The goal was to have every customer call answered in less than 30
11 seconds, and this was largely achieved. Some callers asked for a refund, and all
12 cancellations and refunds were immediately processed. Many, in fact most, of the
13 calls were about the quality of the content being provided, not about any deceptive
14 or unfair practice. Some of the complaints were about the placement of the
15 charges on mobile carriers' bills.

16 24. In addition to the Tatto Defendants, I own other businesses, including
17 Be Great, LLC and subsidiaries (such as Be Great Partners, LLC ("Be Great
18 Partners")) and Scambook, LLC ("Scambook")). I will call these companies
19 collectively the "Unrelated Companies."

20 25. All of the Unrelated Companies are incorporated in Delaware and
21 registered to do business in California, and are in good standing. I have signed
22 personally, in my representative capacity, or have authorized an agent to sign the
23 publicly filed corporate documents.

24 26. Many of the Unrelated Companies also have service marks,
25 trademarks, and/or patents registered with the United States Patent and Trademark
26 Office which list the office where I go to work.

27 27. I have never tried to hide my ownership or participation in any of the
28 companies I own. I have never tried to hide any assets. I hold no offshore

1 accounts or any other hidden or discrete bank accounts. I have no safe deposit
2 boxes. I have never had an offshore account.

3 28. The assets and management of the Tatto Corporate Defendants and
4 the Unrelated Companies have always been kept completely separate.

5 29. Scambook is a very successful online consumer complaint resolution
6 forum. Consumers, for free, may post complaints about businesses' good and
7 services, on the website. Scambook has attracted over 10 million unique visitors to
8 its website per year. To date, Scambook has completed over \$18 million in
9 resolutions for consumers. Scambook regularly cooperates with various federal
10 and state law enforcement agencies, such as the Federal Bureau of Investigation,
11 police departments, and other law enforcement agencies.

12 30. Scambook is frequently featured in major news outlets for its efforts
13 in combating fraud. See <http://www.scambook.com/press>. The following are a
14 few examples:

- 15 • 2013 Holiday Scam Warnings:
16 <http://www.usatoday.com/story/money/columnist/tompor/2013/10/26/susan-tompor-web-scammers/3188647/>
- 17 • 2013 Tax Scams: <http://www.foxbusiness.com/personal-finance/2013/10/03/are-forced-to-pay-taxes-on-scammed-income/>
- 18 • 2013 Fake Student Loans: <http://www.cbsnews.com/news/fake-student-loan-site-steals-identities/>
- 19 • 2013 Tornados: <http://money.msn.com/saving-money-tips/post.aspx?post=30484e3e-9948-497a-a5ab-5997b11f39a2>
- 20 • 2013 Boston Marathon Scam Warning:
21 http://www.huffingtonpost.com/galttime/boston-marathon-charity-scam_b_3132161.html
- 22 • 2013 Superbowl Scams:
23 <http://www.forbes.com/sites/alanaglass/2013/02/03/last-minute-guide-to-super-bowl-xlvii/>
- 24 • 2012 Gift Card Text Messaging Scams:
25 <http://www.nbclosangeles.com/news/local/Target-Best-Buy-Gift-Card-Text-Messages-Are-a-Scam-181064851.html>
- 26 • 2012 Hurricane Sandy Scam Warning:
27 <http://nypost.com/2012/11/15/post-storm-its-clear-skies-for-scammers/>
- 28

1 31. Be Great Partners was recently honored by Los Angeles Mayor, Eric
2 Garcetti, for its leadership and vision in developing an ecosystem to help
3 technology startup companies in Southern California. To date, Be Great Partners
4 has helped 24 startup companies raise \$49.2 million in venture capital. Those 24
5 companies have hired 350 employees. Attached hereto as Exhibit A is a true and
6 correct copy of the Be Great, 2013 Q3 Investor and Mentor Report. The
7 information in the report is accurate.

8 32. Be Great Partners recently hosted a festival that raised \$25,000 for
9 Pencil of Promise. That money will build a new school in Guatemala. During the
10 event, Be Great Partners announced expansion plans for 9 new working facilities
11 which provide office space for entrepreneurs. See
12 [http://www.latimes.com/business/technology/la-fi-tn-be-great-fest-](http://www.latimes.com/business/technology/la-fi-tn-be-great-fest-20130917,0,4517449.story#axzz2n6VJ2VEW)
13 [20130917,0,4517449.story#axzz2n6VJ2VEW](http://www.latimes.com/business/technology/la-fi-tn-be-great-fest-20130917,0,4517449.story#axzz2n6VJ2VEW).

14 33. Like Scambook, Be Great Partners has been featured in many positive
15 articles and stories:

- 16 • [http://www.fastcompany.com/3020056/analysis-finds-las-tech-scene-](http://www.fastcompany.com/3020056/analysis-finds-las-tech-scene-outgrowing-hollywood)
17 [outgrowing-hollywood](http://www.fastcompany.com/3020056/analysis-finds-las-tech-scene-outgrowing-hollywood)
- 18 • [http://www.builtinla.com/blog/be-great-partners-fund-200-la-startups-](http://www.builtinla.com/blog/be-great-partners-fund-200-la-startups-within-next-year)
19 [within-next-year](http://www.builtinla.com/blog/be-great-partners-fund-200-la-startups-within-next-year)
- 20 • [http://www.examiner.com/article/la-s-be-great-partners-seeks-disruptive-](http://www.examiner.com/article/la-s-be-great-partners-seeks-disruptive-innovation)
21 [innovation](http://www.examiner.com/article/la-s-be-great-partners-seeks-disruptive-innovation)
- 22 • [http://pando.com/2013/07/29/be-great-fest-if-you-mix-celebrities-](http://pando.com/2013/07/29/be-great-fest-if-you-mix-celebrities-startups-a-charity-and-a-dj-will-deals-result/)
23 [startups-a-charity-and-a-dj-will-deals-result/](http://pando.com/2013/07/29/be-great-fest-if-you-mix-celebrities-startups-a-charity-and-a-dj-will-deals-result/)
- 24 • [http://techzulu.com/be-great-fest-celebrating-los-angeles-startup-](http://techzulu.com/be-great-fest-celebrating-los-angeles-startup-ecosystem/)
25 [ecosystem/](http://techzulu.com/be-great-fest-celebrating-los-angeles-startup-ecosystem/)
- 26 • [http://upstart.bizjournals.com/companies/hatched/2013/06/17/be-great-](http://upstart.bizjournals.com/companies/hatched/2013/06/17/be-great-partners-launches-in-la.html?page=all)
27 [partners-launches-in-la.html?page=all](http://upstart.bizjournals.com/companies/hatched/2013/06/17/be-great-partners-launches-in-la.html?page=all)

28 34. The Unrelated Companies currently have 45 employees—25
29 developers and engineers and 20 account managers and support personnel. The
30 lawsuit against the Tatto Defendants by the FTC has placed a halt to the Unrelated
31 Companies' expansion plans, including new hires.

1 35. The Unrelated Companies have never been accused of any violation
2 of the FTC Act or any other law or regulation. The Unrelated Companies and the
3 Totto Defendants have never been involved in cramming.

4 I declare under penalty of perjury under the laws of the United States of
5 America that the foregoing is true and correct.

6 Executed on this 12th day of December, 2013, at Los Angeles,
7 California.

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LIN MIAO

EXHIBIT A



begreat

2013 / **Q3** Investor and Mentor Report

EXECUTIVE SUMMARY

Q3 for Be Great resulted in the largest increase in validated progress as management worked aggressively on its mission to Incubate Los Angeles. In summary:

- ✓ WE INCREASED OUR PORTFOLIO SIZE BY **60%**
- ✓ FUNDING RAISED BY OUR PORTFOLIO COMPANIES INCREASED FROM **\$16 MILLION TO \$49.2 MILLION**
- ✓ **1 EXIT**
- ✓ ADDED AN ADDITIONAL **192 JOBS**
- ✓ ANNOUNCED 9 NEW CO WORKING LOCATIONS IN LOS ANGELES ADDING **110,000 SQUARE FEET** OF SPACE TO THE CITY
- ✓ INTRODUCED **BE GREAT BRAIN SALES**: 20 DEDICATED IN HOUSE SALES ASSIGNED TO PORTFOLIO COMPANIES TO BOOST REVENUES
- ✓ HELD A VERY SUCCESSFUL **BE GREAT FEST 2013**
- ✓ RAISED **\$25,000** FOR PENCIL OF PROMISE

Our goals are very ambitious. We believe startups in Los Angeles needs more than just \$25,000 or a team of cool mentors. From the minute they get accepted into our program we want to be everything they ever need: from money, to world class space, to over 25 specialized developers and engineers to a team of 20 in house sales representatives that will work day and night to 10x portfolio revenues. If they choose Be Great Partners, we will accelerate their growth faster than any other incubator or accelerator program we know of.

But we are thinking even more holistically. Entrepreneurs need training and events which is why we are announcing Be Great Events which will be special curated weekly workshops, monthly speaker series and quarterly demo days. The very best from each one of these events will culminate at our annual Be Great Fest where we highlight the very best speakers, startups, charity and an evening of celebration. Be Great Fest 2013 illustrated to the city of Los Angeles in its own style that the city is exploding with interest in developing startups.



Although the steam behind Los Angeles' startup ecosystem has been pushing it along at a fast pace in the past few years, the growth is coming off years of slow movement and the city still has a lot of potential. The leading markets have plenty of accelerators, incubators and co-working spaces, so ideally proven brands explore untapped markets. Be Great Partners itself is headed in that direction, with plans for nine Be Great Lab co-working spaces in the works. While some are planned for the key startup markets of Santa Monica, Pasadena and Downtown LA, some are planned for more underrepresented areas in the space, including Sherman Oaks and Century City.

Be Great's key stakeholders - entrepreneurs, partners, employees and shareholders remain at the center of our strategy. Q3 reflected our passionate focus on the needs of our key stakeholders during a time of aggressive growth and expansion. As Be Great is about to celebrate its 2nd year anniversary, our role as a trusted business and industry partner is becoming increasingly important as we focus on future investments that drive profitability, productivity and value add for the city of Los Angeles.

We are pleased with our strong performance in Q3 and believe the investments we made 12 months ago are paying off in terms of our business and financial metrics. Going into Q4 we will continue to focus on our three major growth areas which are Partners, Brain and Labs.

As always thank you for your continued support.

Sincerely,

Lin Miao
FOUNDER & MANAGING PARTNER

PORTFOLIO STATISTICS



STARTUP CATEGORIES



CO INVESTED WITH



OUR PORTFOLIO COMPANIES



CLOSE



HEXUM



KIVELY



SCAMBOOK



HULLABALU



SKINNY BIKINI



TASTE OF BLUE



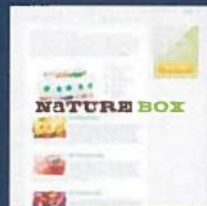
ENPLUG



DEALFLICKS



FRIENDBUY



NATUREBOX



MEUNDIES



ACHIEVEMINT



REPUBLIC PROJECT



SKYCATCH



LETTUCE



SENDHUB



CREATIVE MARKET



EVERSNAP



PORTER



BIOBEATS



PARTNERED



DJZ



CHANGE.ORG

BE GREAT LABS:

Be Great Labs is a trendy multi-location member based work space backed by the Be Great ecosystem of funding, startups, mentors and events. With a no contract affordable monthly membership fee, members receive access to convenient trendy works spaces within Los Angeles and be immersed in an influential community of like minded entrepreneurs. Access to work-shops, speakers series, rocket pitch events and world class mentors enables entrepreneurs who choose Be Great Labs to take their project to the next level.

LOCATIONS ANNOUNCED

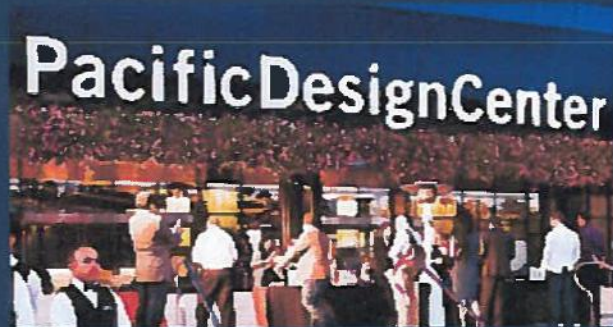


BE GREAT FEST 2013

With almost 1000 in attendance, Be Great Fest 2013 set the example for how startup events should be created in Los Angeles. The event was hosted in the iconic Pacific Design Center with special catering by Wolfgang Puck, music by DJ Politik and world class sponsors such as Uber. The evening celebrated the very best of entrepreneurs and startups in Los Angeles, including 16 of Be Great's portfolio companies.



BE GREAT FEST 2013



RECOGNITION



Be Great Partners was honored by Mayor of LA Eric Garcetti as Be Great announced 9 new co working locations being built in the city.



incubate@begreatpartners.com
(855) 247-8585
5900 Wilshire Blvd. 21st Floor
Los Angeles, CA 90036

WWW.BEGREATPARTNERS.COM

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California, I am over the age of eighteen years and am not a party to this action; my business address is Mitchell Silberberg & Knupp LLP, 11377 West Olympic Boulevard, Los Angeles, CA 90064-1683, and my business email address is bag@msk.com.

On December 12, 2013, I served a copy of the foregoing document(s) described as **DECLARATION OF LIN MIAO IN SUPPORT OF DEFENDANTS' RESPONSE TO ORDER TO SHOW CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE** on the interested parties in this action at their last known address as set forth below by taking the action described below:

David Shonka
Acting General Counsel
Heather Allen
Duane C. Pozza
Jane Ricci
Robin Thurston
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580
Telephone: (202) 326-3224
Fax: (202) 326-3629
E-Mail: hallen@ftc.gov
dpozza@ftc.gov
jricci@ftc.gov
rthurston@ftc.gov

Faye Chen Barnouw
Federal Trade Commission
10877 Wilshire Blvd.
Suite 700
Los Angeles, CA 90024
Telephone: (310) 824-4343
Fax: (310) 824-4380
E-Mail: fbarnouw@ftc.gov

Attorney for Plaintiff Federal Trade Commission

Attorneys for Plaintiff Federal Trade Commission

Daniel M. Benjamin, Esq.
Andrew W. Robertson, Esq.
Ballard Spahr LLP
655 West Broadway
Suite 1600
San Diego, CA 92101-8494
Telephone: 619-696-9200
Facsimile: 619-696-9269
E-Mail: benjamind@ballardspahr.com
robertsona@ballardspahr.com

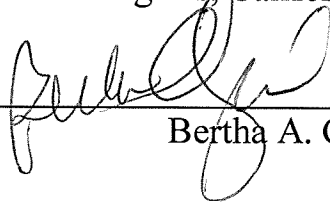
Attorneys for Receiver Thomas W. McNamara

☒ **BY ELECTRONIC MAIL:** I served the above-mentioned document electronically at 12:34 p.m. on the parties listed at the email addresses above and, to the best of my knowledge, the transmission was complete and without error in that I did not receive an electronic notification to the contrary. Service of this document was performed by email pursuant to

1 Court Order, specifically Sections XXII and XXIV of the Court's *Ex Parte*
2 Temporary Restraining Order With An Asset Freeze and other Equitable
3 Relief, and order to Show Cause Why a Preliminary Injunction Should Not
4 Issue, entered on December 5, 2013.

5 I declare under penalty of perjury under the laws of the United States that
6 the above is true and correct.

7 Executed on December 12, 2013, at Los Angeles, California.

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Bertha A. García